IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

MFA.No. 1180 of 2000()

OPMV.1381/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA . dt.30.6.2000
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APPELLANT: PETITIONER

ANNAMMA ALIAS THANKAMMA,
W/O.VARGHESE ALIAS SOMAN,
AMBAZHACHALIL HOUSE,
ELANGAYAM KARA,
VARAPETTY VILLAGE,
KOTHAMANGALAM TALUK.

BY ADV. SRI.P.V.BABY
SRI.A.N.SANTHOSH

RESPONDENTS: RESPONDENTS
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1. **P.V.MARKOSE, S/O. VARGHESE,**
PUTHIAKUNNEL HOUSE,
MARADY KARA, MARADY VILLAGE,
MUVATTUPUZHA TALUK.

2. **CHACKO MATHAI, S/O. CHACKO,**
PERUBANKUNDIYIL HOUSE,
PINDIMANA, KOTHAMANGALAM.

3. **THE ORIENTAL INSURANCE CO.LTD.,**
KOTHAMANGALAM.

BY ADV. SRI.P.V.JYOTHI PRASAD - R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 10/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.No.1180 OF 2000

Dated 10th July, 2007

JUDGMENT

Koshy,J.

Appellant/petitioner met with a motor accident at the age of 35 by which she sustained serious injuries. The Tribunal found that the accident occurred due to the negligence of the driver of the vehicle insured by the third respondent insurance company. There is no dispute regarding the coverage of the vehicle or liability of the insurance company. However, against a claim of Rs.2,50,000/=, only Rs.74,000/= was awarded as compensation. Only dispute is regarding the quantum of compensation. Considering the age of the appellant, 16 was taken as the multiplier. We are of the opinion that no enhancement is needed in the multiplier taken by the Tribunal. The Tribunal has also taken only notional income even though it was claimed that she was getting Rs.3,000/= as monthly income. Since no data was produced, we are unable to change the monthly income assessed by the Tribunal. The next is regarding the percentage of disability. The Tribunal has considered the disability as follows:

> "Ext.A18 is the certified copy of the wound certificate issued from Medical College Hospital, Thrissur wherein the

injuries sustained by the petitioner in the accident were described as follows:

1."Lacerated wound 2 x 1cm. On the lip.
2.Periorbital Haematoma.
3.Laceration 1 x ½ cm. (L) ear lobe."

Ext.A19 is the discharge card issued from Elite Mission Hospital, Thrissur wherein it is noted that the petitioner was treated as inpatient in that hospital from 5.2.94 to 11.2.94. The injuries sustained by the petitioner in the accident were described as fracture left zygoma, comminuted fracture to left maxilla, Chip fracture posterior articular surface of left tibia etc. Ext.A20 is the C.R.Scan report dated 5.2.94 issued from Elite Mission Hospital, Scan Centre wherein the impression is noted as "Small haematoma in medial pole of left thalamus with extension of bleed into the ventricle with mild sub-arachnoid haemorrhage". Ext.A21 is the certificate issued by Dr.R.V.Devadas, Consultant Neurosurgeon at Malankara Medical Mission Hospital, Kolencherry, on 13.3.96 wherein it is certified that the petitioner has seen from that hospital on 19.2.1994 and at that time she had bilateral black eye and complaint of chest pain, that X-rays showed a depressed fracture of the left maxillo zygomatic complex and also an intra articular fracture of the surface of the left tibia that she was treated conservatively and seen regularly in the outpatient department, that she continues to get head ache, chest pain and memory disturbances and that she had a disability of 60% due to the accident."

However, Tribunal fixed only 20% disability on the ground that the doctor was not examined to prove the disability

certificate. Considering the nature of injuries and nature of disability, we are of the opinion that instead of 60% disability as assessed by the doctor, at least 30% ought to have been fixed as disability. If that be so, compensation payable will be Rs.72,000= (Rs.1,250 x 12 x 16 x $\frac{30}{100}$).

Tribunal has granted only Rs.48,000/= for disability and loss of earning power. Therefore, additional compensation payable under this head will be Rs.24,000/=. Even though it is submitted that compensation granted under other heads are very meagre, considering the total amount awarded, we are of the opinion that no enhancement is needed under other heads. The additional amount of Rs.24,000/= shall be deposited by the third respondent insurance company with 7% interest from the date of application till its deposit.

The appeal is partly allowed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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